No. 21813

In the

United States Court of Appeals

For the Ninth Circuit

SWITCHMEN'S UNION OF NORTH AMERICA, et al.,

Appellants,

vs.

SOUTHERN PACIFIC COMPANY,

Appellee.

Appeal from the United States District Court
for the Northern District of California

Brief of Appellee

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SUBJECT INDEX

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STATEMENT OF THE CASE

Appellants called a strike of all switchmen on Appellee's Pacific Lines (seven western states) on March 12, 1967, in order to force the Appellee to nullify the displacement of one yardmaster by another at Tucson, Arizona, on the 11:00 p.m. shift March 11, 1967. It was stipulated that the strike caused substantial damage to Appellee (TR 71). The strike was enjoined by the District Court on the grounds that it violated the Railway Labor Act in that the underlying issue presented a minor dispute. Appellants appeal from the injunction. The nature of the case becomes apparent upon analysis of the undisputed facts.

Appellee's switchmen are represented by Switchmen's Union of North America. Appellee's yardmasters are represented by the Railroad Yardmasters of North America, Inc. Appellee has separate collective bargaining agreements with each union for each respective craft of employees. In evidence are the following agreements:

Exhibit 1—between Appellee and Appellants covering most of Appellee's switchmen, including those at Tucson (TR 16).

Exhibit 2—between Appellee and its yardmasters (TR 17).

Exhibit 3—between Appellee, Appellants, and the yardmasters, a tripartite agreement (TR 27).

Exhibit A—between Appellee and Appellants covering switchmen not under Exhibit 1 (TR 33). This agreement covers switchmen in yards at Tucumcari, New Mexico, El Paso, Texas, and Douglas and Bisbee, Arizona.

Under the switchmen's agreements (Exhibits 1 and A), every switchman has seniority as a switchman at every yard within a seniority district on Appellee's Pacific Lines. All points referred to in this action are in a single seniority district for switchmen. Yardmasters normally are promoted from the ranks of switchmen and also retain switchmen's seniority. Under the yardmasters' agreement (Exhibit 2), a yardmaster has seniority as a yardmaster at every yard at which he has seniority as a switchman.

The underlying dispute arises out of events and actions concerning one yardmaster employee of Appellee. Early in 1967, Appellee closed its yard at Tucumcari and discontinued all yardmaster service there. A number of switchmen then exercised their seniority to work at other yards. Two of the yardmasters at Tucumcari dropped back to the

ranks of switchmen and exercised their seniority as such in another yard. Another yardmaster named Shockley also could have exercised his switchman's seniority at Tucson, El Paso, or other yards. This is undisputed. It is also undisputed that he could have exercised his yardmaster's seniority at El Paso. This action never would have arisen had Yardmaster Shockley thus utilized his seniority in either craft. But he did not.

Instead, Yardmaster Shockley exercised his seniority to displace Yardmaster Hill at Tucson. Appellants called the strike in protest of Shockley's displacement of Hill. Both men were employed at the time in the craft of yardmasters and not in the craft of switchmen, and Shockley was senior to Hill as a yardmaster. But Appellants' protest was based on the fact that Shockley was not a Tucson man. He was properly promoted to yardmaster from the ranks of switchmen in a yard other than Tucson. His promotion was under the switchmen's agreement which is Exhibit A.

Appellants contend that under the terms of Article 12a of Exhibit 1, to work as a yardmaster at Tucson, an employee must have been promoted from the ranks of Tucson switchmen. Appellee agrees that Article 12a prescribes the manner and qualifications for *promotion* of switchmen at Tucson, but contends that the issue here is one of *assignment* of yardmasters. Once a switchman has been promoted, he is a yardmaster for all purposes, and he need not be promoted elsewhere or at successive yards. And once promoted to the craft of yardmasters, the exercise of a yardmaster's seniority to hold a yardmaster's assignment or to displace another yardmaster is governed by agreement with the craft of yardmasters (Exhibit 2), and not by an agreement with the craft of switchmen. Thus, under the yardmasters' agreement, Shockley had more seniority in the craft of yardmasters at Tucson than did Hill and his displacement was

proper, regardless of the fact that he was promoted to yardmaster at a different yard. Shockley's assignment was in accordance with Article 8a of the yardmasters' agreement (Exhibit 2), and was not in violation of any promotion rule of the switchmen's agreement.

Under the yardmasters' agreement, Shockley had to exercise his seniority if he could or else give it up (TR 46). He chose to exercise it. Had the Appellee acquiesced in Appellants' view and told Shockley that he could not displace Hill as a yardmaster, Shockley would have been able to challenge the Appellee's interpretation of his seniority rights by filing a grievance, and the dispute could have ultimately gone through the National Railroad Adjustment Board's Fourth Division for final adjudication. Clearly, the issue if raised by Shockley would have been a minor dispute under the Railway Labor Act (45 U.S.C. 153).

Thus, the issue on the merits is whether Shockley's displacement of Hill was a matter of assignment and displacement under the yardmasters' agreement or one of promotion under the switchmen's agreement. The propriety of the interpretation and application of the agreements is in issue. The proper resolution of the question depends upon the interpretation of both agreements, and of the other agreements also (Exhibits 3 and A), insofar as any party considers them relevant.

The District Court, after hearing testimony and receiving evidence, concluded that the issue between the parties was a minor dispute and that the strike could be properly enjoined.

> ". . . it does appear to me that what we get to is a showing that there are contracts, there are agreements, there are sections in these agreements which apply whether you are going to apply them as purely promotional agreements, that is, methods of promotion, or whether you are going to consider them as conferring

rights or restraining rights to bump, or to take a job by a yardman, or by a yardmaster in other yards than that in which he received his original promotion, these rules are there, are attempting to delineate these very problems.

Now, how they apply and where they apply must be determined, I think, by a Board, by some adjustment board.

This is the problem before us. It's not this Court's duty or province in this proceeding to go into the merits of these claims. We have the contracts. We have the provisions of the contracts. We have the machinery set up in these various contracts to cover apparently these very situations which give rise to this dispute.

So far as the evidence goes, I can see only one thing before me, and that is Mr. Shockley's right to go down from Tucumcari to Tucson. I see no more involved than one man's right to one job, if he has such a right." (TR 136-137)

Since the issuance of the preliminary injunction, the merits of the dispute were submitted to the National Railroad Adjustment Board. Notice was given to Appellants in accordance with the Board's procedures. The Board took jurisdiction and the Fourth Division rendered its Award No. 2262 and Order in Docket 2306 on February 7, 1968, holding that Appellee properly interpreted and applied the controlling agreement when it permitted Yardmaster Shockley to displace Yardmaster Hill. A copy of the Award and Order are attached hereto as Appendix A.

STATEMENT OF THE ISSUE

This appeal raises only one issue—namely, is the dispute over which Appellants called the strike a minor dispute under the Railway Labor Act, 45 U.S.C. 153?[1] If it is minor,

1. Portions of the Railway Labor Act, 45 U.S.C. 152-153, are set forth in Appendix B.

as the District Court concluded, the issuance of the preliminary injunction was proper.

Although the complaint seeks damages, other issues relating thereto have not been tried and are not part of this appeal. The Court is merely asked to determine the magnitude of the underlying dispute under the Railway Labor Act, i.e., whether it is major or minor. It is not asked to, and indeed it may not, analyze the various collective bargaining agreements to determine the merits of the underlying dispute. As noted above, the National Railroad Adjustment Board already has taken jurisdiction of the dispute and rendered its decision on the merits (Appendix A).

SUMMARY OF THE ARGUMENT

Appellee's position is that the District Court correctly construed the dispute over which Appellants called the strike to be a minor dispute under the Railway Labor Act. A strike over a minor dispute may properly be enjoined without regard to the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30 (1957).

The appeal involves a classic type of minor dispute. It is a case of one employee asserting his apparent seniority rights pursuant to an existing agreement. The question is whether or not he had a right to the assignment he sought. The contentions of the parties bring into issue several existing collective bargaining agreements and, according to Appellants, over 30 years of practice under them. The solution to the dispute involves interpreting the applicable agreement or agreements and accommodating them if necessary. It is the basic function of the National Railroad Adjustment Board to resolve the dispute, and since the commencement of the action it has done so (Appendix A).

Its authority and obligation to do this is plain. *Order of Railway Conductors v. Pitney,* 326 U.S. 561 (1946); *Transportation-Communication Employees Union v. Union Pacific R.R.,* 385 U.S. 157 (1966), *rehearing denied,* 385 U.S. 1032. Appellee denies any intention or attempt to modify the terms of any agreement with Appellants (TR 57).

ARGUMENT

I. The Dispute Which Motivated Defendants to Strike Is a Minor Dispute Over the Assignment or Promotional Rights of an Employee of Plaintiff Pursuant to Existing Collective Bargaining Agreements.

The Court does not have the burden of resolving the merits of the dispute between plaintiff and defendants in the Shockley matter. The Court must decide only the magnitude of the dispute, i.e., whether it is major or minor under the Railway Labor Act, 45 U.S.C. 151, et seq.

While it is semantically easy for defendants to argue that any breach of an agreement is a repudiation of the agreement, it is substantively not possible in the field of railroad labor relations to label an alleged breach of an agreement a major dispute. The basic authority on the distinction between major and minor disputes is *Elgin, J. & E. R.R. v. Burley,* 325 U.S. 711 (1945). Defining first major and then minor disputes, the Court said:

> "The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore *the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.*
>
> *"The second class, however, contemplates the existence of a collective agreement already concluded, or,*

at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case." (p. 723) (Emphasis added.)

The instant case is not the first time a union which has disagreed with the railroad's application of its agreement has argued that the railroad changed the contract without complying with Section 6, 45 U.S.C. 156. *Hudie v. Aliquippa & Southern R.R.,* 249 F.Supp. 210 (W.D. Pa. 1966), *affirmed,* 360 F.2d 213 (3rd Cir. 1966), and *St. Louis, S.F. & T. Ry. v. Railroad Yardmasters of America,* 328 F.2d 749 (5th Cir. 1964), *cert. denied,* 84 S.Ct. 1886. The latter case involved the abolishment of several yardmaster positions at one time (as at Tucumcari). The question was whether the agreement provided for the multiple abolishments. The Court held that the question presented a minor dispute.

"The carrier was doing, so it said, what the contract authorized it to do and it was not doing what the Union said it was, to-wit: Seeking or proposing 'an intended change in *agreements* affecting rates of pay, rules, or working conditions.' So it is, that the carriers take the position that rather than being off base by not proceeding under Section 6 seeking to bargain for a change in existing agreements, it was strictly in line by acting under the existing contract and that it was in fact the Union that was off base in going to court to litigate the issue rather than pursuing grievance procedures by challenging the right of the carrier to abolish the positions under the terms of the existing contract and referring the issue to the Railroad Adjustment Board which the carrier contends has exclusive jurisdiction where a contract interpretation is involved." (p. 751)

Closely in point is *Order of Railway Conductors v. Pitney,* 326 U.S. 561 (1946). The dispute was over what employees were to fill certain assignments. (The same basic issue as in the instant case.) Two unions each insisted that its agreement and the practice thereunder applied and men from its craft were entitled to the assignments.

> ". . . It alleged that its members had for the past 35 years operated the trains in issue as a result of negotiations as to rules, rates of pay and working conditions between it and the railroad and that the 1940 contract specifically provided that this situation would not be changed without further agreement. Thus, the proposed displacement of O.R.C. conductors would violate § 6 of the Railway Labor Act which makes it unlawful for a carrier or employee representatives to change 'pay, rules, or working conditions,' unless 30 days written notice of the intended change shall have been given and the controversy has been finally acted upon by the Mediation Board. The O.R.C. asked the court to instruct its trustees not to displace road conductors and to enjoin them permanently from taking such action so long as O. R. C.'s contracts with the road were not altered in accordance with the provisions of the Railway Labor Act." (p. 563)

While the claim of the Conductors in the *Pitney* case was based on their agreement and 35 years of practice (the very claim the Appellants make in this case), the railroad denied the applicability of the conductors' contract and asserted that the trainmen's contract applied (the claim of Appellee in this case). Thus the Court said that the railroad's denial put the interpretation of all contracts in issue and that it was a minor dispute for the Adjustment Board.

> "These sections make it clear that the only conduct which would violate § 6 is a change of those working conditions which are 'embodied' in agreements. But the

answers here specifically denied that the O. R. C. agreements provided that road conductors operate the five trains in question. This put in issue the meaning of the contracts that allegedly embodied the working conditions which the trustees were about to change. The court, therefore, had to interpret these contracts before it could find that § 6 had been violated." (p. 565)

". . . The record shows, however, that interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position. [Citations omitted.] For O. R. C.'s agreements with the railroad must be read in the light of others between the railroad and B. R. T. And since all parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom, that too must be taken into account and properly understood. The factual question is intricate and technical. An agency especially competent and specifically designated to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. [Citations omitted.] Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. Until such time, O. R. C. can not show irreparable loss and inadequacy of the legal remedy. The court of equity should, therefore, in the exercise of its discretion stay its hand." (pp. 566-67)

There is no question or conflict in the judicial decisions on this point. A dispute over the right of an employee to displace on or hold a given assignment and the corresponding obligation of the railroad to give a certain employee the assignment is a minor dispute. The underlying dispute in *Pitney,* as in this case, is which employee is entitled to the

assignment. The principle of the *Pitney* case was reasserted in *Transportation-Communication Employees Union v. Union Pacific R.R.,* 385 U.S. 157 (1966), *rehearing denied,* 385 U.S. 1032:

> "The railroad, the employees, and the public, for all of whose benefits the Railway Labor Act was written, are entitled to have a fair, expeditious hearing to settle disputes of this nature. And we have said in no uncertain language that the Adjustment Board has jurisdiction to do so. Order of Railway Conductors v. Pitney, 326 US 561, 90 L ed 318, 66 S Ct 322, was decided 20 years ago. That case concerned a dispute over which employees should be assigned to do certain railroad jobs, members of the conductors' union under their contract or members of the trainmen's union under their contract. In that case a district court, in charge of a railroad bankruptcy, had entered a judgment in favor of the conductors. We reversed, holding that the Railway Labor Act vested exclusive power in the Adjustment Board to decide that controversy over job assignments." (p. 269)

To the same effect is *Slocum v. Delaware, L. & W. R.R.,* 339 U.S. 239 (1950).

Appellants assert that Appellee's acquiescence in Shockley's displacement at Tucson constituted "unilateral change" in Appellants' agreement. The National Mediation Board, which administers much of the Railway Labor Act, in its annual report for 1967 commented upon the misunderstanding that underlies this assertion.

> "Applications for the mediation services of the Board frequently indicate a misunderstanding as to the jurisdiction of the National Mediation Board and that of the National Railroad Adjustment Board. Such applications are received with the advice that a change made or proposed to be made by the carrier 'constitutes a unilateral change by the carrier in the working

conditions of the employees without serving notice or conducting negotiations under section 6 of the act.' The Board is requested to take immediate jurisdiction of the dispute and call the carriers' attention to the 'status quo' provisions of section 6 of the act, i.e., have the carrier withhold making the change in working conditions, or restore the preexisting conditions if the change has already been made, until the dispute has been processed by the National Mediation Board.

Section 6 of the Railway Labor Act reads as follows:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

The organization in these instances will contend that proposed changes by the carrier should not be made without following the procedures cited in section 6 above. *These changes may involve assignment of individual employees* or crews in road passenger or freight service, relocation of the point for going on and off duty in yard service, reduction of the number of employees through consolidations of facilities and changes which arise from development of new and improved method of work performance.

The carrier, on the other hand, will maintain that the procedure of notice and conference outlined in section 6 does not apply as the section has application only to those working conditions incorporated in written rules which have been made a part of the collective bargaining agreement with the representative of the employees and by which the carrier has expressly restricted or limited its authority to direct the manner in which certain services shall be rendered by its employees.

It is clear then that disputes of this nature involve a problem as to whether the proposed change can be instituted without serving a notice of intended change in the agreement on the other party. This raises a question of application of the existing agreement to the pending proposal. Such a dispute is referable to the National Railroad Adjustment Board. On the other hand, if it is contended by the organization that the carrier has no right to make the proposed changes, and the carrier maintains that it is not restricted by the terms of the agreement from making the change, then the dispute pertains to the question of what the agreement requires and the dispute should be referred to the National Railroad Adjustment Board in accordance with section 3 of the Railway Labor Act for decision." (pp. 35-36) (Emphasis added.)[2]

Appellants cannot change the nature of the dispute by giving it their own label. The agreements cover problems of promotion and assignment. The parties disagree on their interpretation and application as to Shockley. This is the type of dispute the Adjustment Board was created to adjudicate. *Seaboard Air Line R.R. v. Castle,* 170 F.Supp. 327 (N.D. Ill. 1958); *Order of Railway Conductors v. Swan,* 329 U.S. 520 (1946).

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2. Thirty-Third Annual Report of The National Mediation Board for the Fiscal Year ended June 30, 1967.

II. Appellants' Cases Are Not in Point Because They Assume the Wrong Conclusion.

Appellee has dwelt at some length on the facts of this case, although they are not in issue, because it is essential to understand the facts in order to determine the nature of the dispute between the parties. The cases are helpful in that they define the criteria and standards for making the determination. The *Burley* case, *supra,* is relied upon by both parties to state the general rule. The *Pitney* case, *supra,* and the *Yardmasters* case, *supra,* are closely analogous in their facts and contentions and compel the conclusion that the Shockley matter is a minor dispute.

Appellants assume that the case presents a major dispute under section 6 (45 U.S.C. 156) and cite authorities under section 6 to show that the federal courts may not enjoin strikes arising out of such disputes. Their cases involve major disputes, but the facts in those cases are not analogous to those of Yardmaster Shockley. Appellants' citations on page 14 of their brief, i.e., *Brotherhood of R.R. Trainmen v. Toledo P.&W. R.R.,* 321 U.S. 50 (1944); *Order of R.R. Telegraphers v. Chicago & N.W. Ry.,* 362 U.S. 330 (1960); and *Butte, Anaconda & P. Ry. v. Brotherhood of Locomotive Firemen & Enginemen,* 268 F.2d 54 (9th Cir. 1959), *cert. denied,* 361 U.S. 864, each involved formal demands by the carrier or union for a change in agreements. No such demand exists in the Shockley dispute. The disputes in Appellants' cases were major and Appellee does not question the holdings therein. The cases simply are not in point when considered in the light of Yardmaster Shockley's displacement of Yardmaster Hill. The other case on page 14, *Missouri-Kansas-Texas R.R. v. Randolph,* 164 F.2d 4 (8th Cir. 1947), *cert. denied,* 334 U.S. 818, is similar to the *Pitney* case and involved a jurisdictional dispute between unions. It did not involve a strike.

Appellants charge that, in standing by while Shockley took the Tucson assignment, Appellee "unilaterally" changed the switchmen's agreement. As explained in the National Mediation Board's Annual Report, *supra,* this is but a harsh sounding way to charge a breach of the switchmen's agreement. Particularly when only one assignment of one individual at one location is involved, it can be nothing more than the ordinary grievance or minor dispute. Appellants state in their brief at page 16:

> "Here, the work being done by Yardmaster Shockley on March 11, 1967 was admittedly to be performed by the craft of yardmasters, and Switchmen's Union of North America raises no question here but that such position was properly filled by a person belonging to the class of employees known as yardmasters. The specific position would have been filled in any event by a yardmaster; the simple fact remains that in this instance a yardmaster was promoted to such position in the Tucson Yard in specific violation of the agreement of the Switchmen's Union governing the promotion of yardmasters from switchmen in that particular yard."

By their own analysis, the issue is which employee was entitled to hold the yardmaster assignment in Tucson. Or, stated another way, was Shockley entitled to fill the position? The answer requires an interpretation of the agreement rules. It is simply a grievance and minor dispute.

III. The Norris-LaGuardia Act Does Not Prevent Relief Against a Strike Over a Minor Dispute.

The Court may protect the jurisdiction of the Adjustment Board and the procedures of the Railway Labor Act, 45 U.S.C. 153, by enjoining a strike which would frustrate the peaceful procedures for settling disputes arising out

of the interpretation and application of collective bargaining agreements. *Brotherhood of Railroad Trainmen v. Chicago R. & I. R.R.*, 353 U.S. 30 (1957). The ultimate issue of the *Chicago River* case was whether, in the light of the Norris-LaGuardia Act, the Court could enjoin a strike over a minor dispute. The Court concluded that the procedures of the Railway Labor Act (45 U.S.C. 153) for settling minor disputes were "compulsory arbitration" (353 U.S. 39), and that the mandates of the Railway Labor Act must take precedence over the Norris-LaGuardia Act.

> "The only question which remains is whether the federal courts can compel compliance with the provisions of the Act to the extent of enjoining a union from striking to defeat the jurisdiction of the Adjustment Board. The Brotherhood contends that the Norris-LaGuardia Act has withdrawn the power of federal courts to issue injunctions in labor disputes. That limitation, it is urged, applies with full force to all railway labor disputes as well as labor controversies in other industries.
>
> "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable." (pp. 39-40)
>
> "In prior cases involving railway labor disputes, this Court has authorized the use of injunctive relief to vindicate the processes of the Railway Labor Act. *Virginian R. Co. v. System Federation No. 40,* 300 U.S. 515, was an action by the union to enjoin compliance with the Act's provisions for certification of a bargaining representative. The question raised was whether a federal court could issue an injunction in a labor dispute. The Court held:

> 'It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act.' *Id.,* at 563.

In *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768, and other similar cases, the Court held that the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act.

> 'Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act.' *Id.,* at 774.

This is a clear situation for the application of that principle." (pp. 41-42)

Appellants quote at length from the Norris-LaGuardia Act, 29 U.S.C. 101, et seq. Their points may have some relevancy to a major dispute after all procedures of the Railway Labor Act have been exhausted. Such procedures (particularly mediation) were not invoked or exhausted in the Shockley matter because it is not a major dispute. The Norris-LaGuardia Act is no obstacle to enjoining a strike over a minor dispute. Appellants and Appellee agree on the rule of law for minor disputes.

> "It is fairly well settled as a general proposition that under certain circumstances a minor dispute, involving the interpretation and application of an existing collective bargaining agreement, which has not been decided by the National Railroad Adjustment Board, is enjoinable. *Brotherhood of Railroad Train-*

> *men v. Chicago River & I. R.R.,* 353 U.S. 30 (1957); *Louisville & Nashville R.R. v. Brown,* 252 F.2d 149 (5th Cir. 1958). Such cases hold that where a minor dispute occurs, it is necessary to construe the general provisions of the Norris-LaGuardia Act in a fashion so as not to do violence to the specific provisions of the Railway Labor Act, thus protecting the jurisdiction of the Railway Adjustment Board." (Appellants' Brief, pp. 13-14)

Since the *Chicago River* case, the federal law of labor relations has progressed even further in its policy of favoring and encouraging arbitration as the means of settling minor disputes. Even doubtful cases are to be arbitrated. Doubt about the arbitrability of a dispute is to be resolved in favor of arbitration. *Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Co.,* 363 U.S. 574 (1960); and *Steelworkers v. Enterprise Corp.,* 363 U.S. 593 (1960).

The Courts have consistently and uniformly upheld the issuance of an injunction to protect and preserve the jurisdiction of the administrative agency, i.e., the Adjustment Board. It is the compulsory and exclusive forum for the settlement of grievances and other minor disputes. The Shockley incident presents a classic case for the injunction. *Brotherhood of Locomotive Engineers v. Louisville & N. R.R.,* 373 U.S. 33 (1963); *Louisville & N. R.R. v. Brown,* 252 F.2d 149 (5th Cir. 1958), *cert. denied,* 356 U.S. 949; *Texas Pacific-Missouri Pac. Term. R.R. v. Brotherhood of Ry. Clerks,* 232 F.Supp. 33 (La. 1964); *Norfolk & Portsmouth Belt Line R.R. v. Brotherhood of R.R. Trainmen,* 248 F.2d 34 (4th Cir. 1957), *cert. denied,* 355 U.S. 914.

CONCLUSION

The procedures of section 3 of the Railway Labor Act (45 U.S.C. 153) provide the adequate and proper means for the adjustment of the Shockley grievance. Appellants' position constitutes nothing more than a charge that Appellee misapplied the promotion rule of Exhibit 1 when Shockley was permitted to displace Yardmaster Hill. This charge raises a minor dispute. It has been submitted by Appellee and the Yardmasters Union to the National Railroad Adjustment Board. The Board took jurisdiction, and a referee already has decided the dispute. There the matter should end.

It is respectfully submitted that the decision of the District Court issuing the preliminary injunction should be affirmed.

Respectfully submitted,

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San Francisco, Calif. 94105

Attorneys for Appellee.

CERTIFICATE OF SERVICE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

William R. Denton
Attorney for Appellee

(Appendices Follow)

Appendix A

Award No. 2262
Docket No. 2306

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee John Day Larkin

Parties to Dispute:

Southern Pacific Company (Pacific Lines)
and
Railroad Yardmasters of North America, Inc.
vs.
Switchmen's Union of North America

Statement of Claim:

Petitioners' claim that Yardmaster J. D. Shockley, who was not promoted to yardmaster under Article 12(a) of the September 1, 1956, Switchmen's Agreement, had the right under Article 8(a) of the current agreement covering yardmasters to displace a junior yardmaster at Tucson following the discontinuance of the last yardmaster assignment at Tucumcari.

Findings:

The Fourth Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Petitioners, Railroad Yardmasters of North America, Inc., and Southern Pacific Company, and the Respondent,

Switchmen's Union of North America, were given due notice of the hearing; the Petitioners appeared at said hearing; and the Respondent waived right of appearance at said hearing.

The right to negotiate with the carrier rules governing the performance of the work of the yardmaster craft, including the exercise of seniority to obtain positions covered by the yardmasters' agreement, is vested solely in the organization legally authorized to represent the yardmaster craft. See Awards 430, BRT v. IHB; 495, NPTC v. BRT; 1360, SUNA v. WP; and 1531, SUNA v. SP, by this Division. See also Switchmen's Union of North America v. Southern Pac. Co., C. A. Cal. 1958, 253 F. 2d 81, certiorari denied 79 S. Ct. 29, 358 U. S. 818, 3 L. ed. 2d 60, rehearing denied 79 S. Ct. 152, 358 U. S. 896, 3 L. ed. 2d 123, and Order of Railway Conductors and Brakemen v. Switchmen's Union of North America, C. A. Ga. 1959, 269 F. 2d 726, certiorari denied 80 S. Ct. 206, 361 U. S. 899, 4 L. ed. 2d 155. The controlling Agreement involved in this dispute is between the Railroad Yardmasters of North America, Inc., and the Southern Pacific Company and contentions to the contrary are invalid.

This Board, therefore, finds that the contentions of the petitioners must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: /s/ MURIEL L. HUMFREVILLE
Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1968.

Form 2(a)

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

ORDER

To accompany (Award Number 2262
(Docket Number 2306

To Southern Pacific Company (Pacific Lines)
Mr. C. A. Ball, Manager of Personnel
65 Market Street
San Francisco, California 94115

Railroad Yardmasters of North America, Inc.
Mr. Robert C. Inman, General Chairman
153 Yosemite Avenue
Fresno, California 93701

The Division, after consideration of the Docket identified above, hereby orders that an award favorable to the petitioners should be made. The claim is sustained as set forth in the Award, a copy of which is attached and made a part of this Order.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: /s/ MURIEL L. HUMFREVILLE
Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1968.

Copy to Switchmen's Union of North America
Mr. John R. Burge, General Chairman
268 Market Street
San Francisco, California 94111

Appendix B

Railway Labor Act, 45 U.S.C.

§ 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

§ 153. National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards

First. There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

* * *

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom

shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934,

shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

* * *

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the award shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

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